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NATIONAL CLEARINGHOUSE
FOR LEGAL SERVICES

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LONZY JEFFRIES,

PLAINTIFF,

VS.

THE LEWIS GROUP, ROSALYN LEWIS, ALBERT A. BARLOW, BARBARA BARLOW, SECURITY PACIFIC FINANCE CORPORATION and RECORDER OF DEEDS,

DEFENDANTS.

87 CH 2164

FINDINGS OF FACT, MEMORANDUM OF LAW
AND ORDER

This matter came on for trial commencing August 15, 1990 and after 10 days of trial on a long and protracted basis ended on July 9, 1991.

The Court had the opportunity to hear all of the witnesses, weigh their credibility and observe their demeanor and further the Court had the benefit of all the arguments of the respective attorneys and their written Suggested Findings of Fact, Memorandum of Law and Suggested Orders.

This matter was brought by Lonzy Jeffries ("Jeffries"), an elderly, illiterate and unsophisticated widower, to secure redress for the actions perpetrated upon him by the defendants, Rosalyn Lewis ("Lewis"), by and through her company, the Lewis Group (hereinafter Lewis and the Lewis Group will collectively referred to as "Lewis"), and Albert and Barbara Barlow ("the Barlows").

At its core, this case concerns a foreclosure scheme which is becoming increasingly more common throughout the country, and which has devastating effects upon poor, uneducated and unsuspecting homeowners like Jeffries.

The common thread of these schemes is that the transaction is understood by the homeowner to be a loan, and has all the objective indicia of a loan.

The amount the homeowner gets is only that amount they need and is not related to the value of the property.

The homeowner is not compensated for the equity they had in their home, and understands only that once the loan has been repaid, the lien it created against the property will be removed.

In reality, the transaction in which the homeowner unwittingly participates is a sale lease-back transaction, designed to result in the permanent loss of their property.

<u>FINDINGS OF FACT</u>

In 1986, Mr. Jeffries was an elderly retiree in his 80's with no experience in financial matters and a third grade education. He owned a four unit building in which he resided, located at 7925-27 S. Ada, Chicago, Illinois. The other apartments were either vacant or occupied by family members either on public aid or social security disability. Mr. Jeffries' source of income was social security and a little income from an upholstery business which he conducted.

In 1984, Mr. Jeffries' building was sold for unpaid real estate taxes. When Mr. Jeffries discovered the problem, he attempted to obtain a loan to get the money necessary to redeem his property.

Unfortunately, due to his age and limited income, he was unable to obtain financing through traditional lenders.

The Court further finds that early in 1986, Mr. Jeffries' daughter, Ms. Burpo, approached Ms. Lewis asking her for assistance in obtaining financing for about $19,000 to pay off the taxes and other debts on the property owed by her father.

Ms. Lewis held herself out as offering services in comprehensive foreclosure counseling and obtaining mortgages and refinancing. After meeting with Mr. Jeffries, Lewis agreed to assist him in obtaining the financing to pay the taxes and other debts.

The Court further finds that after reviewing his income and assets, Ms. Lewis informed Ms. Burpo that, with his limited resources, Mr. Jeffries would not be eligible for a conventional loan without a co-signor. Ms. Lewis then informed Ms. Burpo that she had outside people who could co-sign a loan. The transaction was described as a refinancing transaction in which the investors would be co-signers and their credit would be used to obtain the loan. Both Ms. Burpo and Mr. Jeffries agreed to the proposal as presented by Ms. Lewis.

In actuality, the transaction was a sale with an option to repurchase. Neither Mr. Jeffries or Ms. Burpo were told the true nature of the transaction; instead they relied entirely on Ms. Lewis to protect Mr. Jeffries' interests.

The Court further finds that Ms. Lewis created a financial deal that was not only confusing in its terms, but was self dealing in that it provided benefits to herself and her investors, the Barlows, at the expense of her client, Mr. Jeffries. The basic terms which governed this sale transaction with an option for repurchase were as follows:

I. THE SALE

A. First, Mr. Jeffries was to convey title to the Barlows.

B. The Barlows would then apply for a refinance loan representing themselves as the owners.

C. Whatever loan amount obtained would be construed as the full consideration that the Barlows would pay to purchase Mr. Jeffries' property.

D. The purchase price paid by the Barlows would be less than the property's fair market value.

E. Except for the fees that had to be paid prior to the closing, (i.e., credit check and appraisal), the Barlows would not have to pay any out-of-pocket costs incurred in getting the loan or purchasing the property.

F. Lewis would take complete responsibility for organizing and implementing the sale transaction.

II. THE OPTION CONTRACT

A. Upon becoming the owner of the property, the Barlows were supposed to give Mr. Jeffries an option to repurchase the property.

B. The repurchase price that Mr. Jeffries would have to pay would be at least equal to the amount of the loan initially obtained by the Barlows when they purchased the property.

C. The time given to Mr. Jeffries to repurchase the property would be short.

D. During the option period, Mr. Jeffries would remain in possession of the property.

E. During the option period, all expenses associated with the building (i.e., mortgage payment, taxes, water) would be covered by the rent so that the Barlows would not have any out-of-pocket costs during this period.

F. If Mr. Jeffries failed to repurchase the property within the option period, the Barlows would become the sole owners of the property.

While telling Jeffries she was assisting him in getting a loan, Lewis organized and orchestrated the following events leading to the loss of Jeffries' property:

1. On April 8, 1986, Mr. Jeffries and the Barlows signed a real estate sales contract in which the Barlows agreed to pay $45,000 to purchase Mr. Jeffries property. Jeffries thought he was signing loan documents. The terms of the contract were drafted by Ms. Lewis when she thought the building was worth $60,000.

2. No later than April 17, 1986, Ms. Lewis was in contact with Security Pacific on behalf of the Barlows to obtain a "refinance" loan for $45,000. The Barlows were aware that Ms. Lewis was representing that they already owned the property and were only seeking refinancing.

3. On June 2, 1986, Mr. Jeffries unwittingly signed a quit claim deed conveying his interest in the property to the Barlows. Lewis told Jeffries it was a loan document. At the time he signed it, the occurrence was not witnessed by a notary public.

4. No later than June 7, 1986, it became apparent that due to its condition, the property's market value was only $48,000. As a result, Security Pacific would not provide a loan for more than $34,000.

5. The deal was then restructured with the purchase price reduced to the new loan which was in the amount of $34,000.

6. On July 9, 1986, the Barlows signed an option-to-buy back contract setting out the terms of Mr. Jeffries' right to repurchase the property. In essence, to regain title to his home, Mr. Jeffries was required to pay the Barlows $36,000 no later than January 31,

1987. Mr. Jeffries was not given a copy of the option contract, nor did he know of its existence.

7. A closing occurred on July 11, 1986. The Barlows obtained a loan from Security Pacific in the amount of $34,365.58 secured by a trust deed on Mr. Jeffries property. At the closing, Ms. Lewis presented to the Security Pacific representative the unnotarized quit claim deed signed by Mr. Jeffries. The representative notarized the document and then proceeded with the closing.

8. The payout of the loan was as follows:

Amount of Loan		$34,365.48
Costs of obtaining loan		
Points	$1,031.00	
Recording fees	22.00	
Appraisal fee	50.00	
Title insurance	262.50	
Prop. transfer taxes	130.00	
	$1,495.50	
		$32,869.98
Payment to Lonzy Jeffries		
H.U.D. loan	$4,006.82	
Tax redemption cost	6,546.45	
Taxes for 1985	1,768.49	
Proration of `86 taxes	876.22	
Water bill	1,556.37	
Proration `86 water bill	350.00	
Cash	5,500.00	
	$20,604.35	
		$12,265.63
Payment for improvements prior to closing	$ 2,600.00	$ 9,665.63
Payment to Lewis and Barlows		
Commission for Lewis	$4,800.00	
Fee for Barlows	$3,750.00	
To Barlows for future repairs to house	592.63	
Fire insurance	523.00	
	$9,665.63	
		$0

9. Mr. Jeffries was given $5,500 in cash from the loan proceeds. At that time, Lewis told him that he would have to pay $600 a month for 5 years to repay the loan. Lewis did not tell Mr. Jeffries that he did not own his home, and did not tell him that he would have to make a balloon payment of $36,000 on or before January 31, 1987 to repurchase it.

10. For the next five or six months, until he discovered the real nature of the transaction, Mr. Jeffries paid $600 per month to cover the mortgage payment, real estate taxes, insurance and other costs related to the building.

11. As of January 31, 1987, Mr. Jeffries was not financially able to exercise the option to repurchase his home. As a result, he lost all ownership interest in his residence.

The Court finds that when this suit was initially brought in Chancery, plaintiff sought reformation of the transaction to reflect that the consideration he received created a mortgage and was not a sale. Subsequently the plaintiff amended his complaint to include, along with equitable relief, a prayer for compensatory and punitive damages as well as attorney's fees. Plaintiff is now just seeking damages.

Based on all of the evidence received, the Court finds that Rosalyn Lewis is liable to Mr. Jeffries in the fact that she breached a fiduciary relationship which existed between Ms. Lewis and Mr. Jeffries. The Court further finds that Lewis breached her fiduciary duty by assisting the Barlows in gaining an advantage at the expense of Mr. Jeffries.

The Court further finds that Lewis breached her fiduciary duties by imposing fees upon Mr. Jeffries which were excessive and unconscionable.

The Court further finds that Lewis breached her fiduciary duty by engaging in self-dealing.

The evidence clearly shows that Lewis breached her fiduciary duty by inducing Jeffries to pursue a riskier transaction and steering him away from better options.

The Court finds that Ms. Lewis breached her fiduciary duty in that her actions constituted fraud, constructive fraud, and negligent representations.

Count II of the plaintiff's complaint pleads a violation of the Illinois Consumer Fraud Act.

Count III of the plaintiff's complaint sets forth a cause of action in common-law fraud.

The Court finds that the Plaintiff has sustained his burden of proof in proving that Lewis has been guilty of violating the Illinois Consumer Fraud Act and is also guilty of common-law fraud set out in this opinion.

THE COURT FINDS THAT LEWIS WAS NOT A CREDIBLE WITNESS.

The Court finds that the Barlows are liable under an agency theory--Lewis' misrepresentations of self-dealing were done within the scope of her authority as the agent of the Barlows.

The Barlows gave Ms. Lewis actual authority to act on their behalf.

Court further finds that an agency relationship is demonstrated by the fact that the relationship between the Barlows and Lewis pre-dated the Jeffries' transaction.

The evidence shows that an agency relationship is demonstrated by the conduct of the parties in this matter and that the Barlows' objective was to purchase Mr. Jeffries' property.

The Barlows relied entirely on Lewis to organize the transaction that led to their purchasing Mr. Jeffries' home.

The Court further finds that Lewis' misrepresentations and acts of self dealing were done within the scope of her authority as an agent of the Barlows.

The Court finds that both Lewis and the Barlows made misrepresentations to Security Pacific as to the ownership of the property.

The Court finds that the Barlows knew this transaction was bound to fail for Mr. Jeffries.

The Court further finds that the Barlows ratified the misrepresentations that the service they were offering Mr. Jeffries was the use of their credit.

Further the Barlows accepted Mr. Jeffries' paying for the fire insurance after they became the owners of the property.

The Barlows acquiesced in participating in a transaction which was ostensibly set up to save Mr. Jeffries' home even though it was bound to fail.

The Barlows acquiesced in allowing Lewis to set the terms of the option contract to provide them with an additional profit above the $4,200 already paid by Mr. Jeffries for their services.

The Barlows acquiesced to Lewis shifting the closing costs of the loan to Mr. Jeffries.

The Court further finds that because the Barlows had notice that Ms. Lewis was betraying her fiduciary duty to Mr. Jeffries, the Barlows are liable for Ms. Lewis' breach of her fiduciary duty.

The Court further finds that the Barlows are also liable as co-conspirators along with Ms. Lewis.

<u>The Court further finds that Mr. Barlow was not a credible witness</u>.

The Court further finds that Mr. Jeffries is entitled to actual damages and to punitive damages.

The Court further finds that Mr. Jeffries is entitled to the difference between the actual value of his property and the amount of benefit he received from the transaction.

The Court finds that although it appears that the Barlows paid $34,365.48 for the property, they actually paid substantially less since a portion of this purchase price was returned in the form of their fee ($4,200) and the repairs ($2,600) to the property that they own. Thus, they actually only paid $27,565.48. They received this windfall by retaining as their agent someone they knew was an "insider", who was the same person Mr. Jeffries was relying on to save his home. The Court will address this particular matter in assessing punitive damages hereafter.

MEMORANDUM OF LAW

The Liability of Rosalyn Lewis

I. Breach of Fiduciary Duty

A. A Fiduciary Relationship Existed Between Ms. Lewis and Mr. Jeffries.

A person who undertakes to manage some affairs for another, on the authority and for the account of the latter, who is called the principal, is an agent. In re Estate of Morys (1973), 17 Ill.App.3d 6, 9. Jeffries asked Lewis to help him get a loan, and Lewis represented that she would help him get a loan or refinancing. Thus, Ms. Lewis was acting as Mr. Jeffries' agent in trying to obtain refinancing.

Where one voluntarily acts as an agent for another, a fiduciary relationship exists as a matter of law. Ray v. Winter (1977), 67 Ill.2d 296, 304. The evidence adduced at trial demonstrates the existence of a fiduciary relationship between Lewis and Jeffries.

Lewis testified that she knew Jeffries relied on her expertise. Jeffries entrusted his affairs to Lewis, and reposed faith and confidence in her. Lewis undertook to obtain refinancing on Jeffries' authority. Based on the evidence presented, a fiduciary relationship existed between the parties as a matter of law. Allabastro v. Cummins (1980), 90 Ill.App.3d 394, 398.

B. Ms. Lewis Breached Her Fiduciary Duty To Mr. Jeffries

The relationship of principal and agent is one of trust and confidence. While acting as an agent of another, one owes the duty of

fidelity and loyalty; accordingly, a fiduciary cannot act inconsistently with his agency or trust. ABC Trans. Natl'l v. Aeronautics Forwarders (1978), 62 Ill.App.3d 671, 683.

This Court has found that Lewis assisted the Barlows in gaining an advantage at the expense of Jeffries. Lewis acted as the agent of both Jeffries and the Barlows, and both relied on her. This placed Lewis in a conflict of interest position. The Barlows wanted to purchase or acquire real estate while Jeffries wanted only a loan to save his property. Generally, an agent may not act for two parties whose interests are adverse without the knowledge and consent of both princpals (Duffy v. Setchell (1976), 38 Ill.App.3d 146). Lewis steered Jeffries into unwittingly selling his property to the Barlows for a fraction of its market value.

Jeffries was made to pay for the Barlows' expenses. By inducing Jeffries to proceed with the transaction, Lewis breached her fiduciary duty.

Further, Lewis imposed fees upon Jeffries which were excessive and unconscionable. By providing Jeffries with "extra time" to obtain a loan, both the Barlows and Lewis were paid fees. It was obvious that this trnasaction was not the best alternative for Jeffries to save his home. By persuading Jeffries so, Lewis breached her fiduciary duty and intentionally misrepresented material facts. Lewis induced Jeffries to pursue a riskier transaction and steered him away from better options.

Lewis also engaged in self dealing. In this transaction, Lewis, the fiduciary, gained at the expense of her beneficiary. This type of conduct is presumptively fraudulent and avoidable by the beneficiary.

A fiduciary can dissipate this presumption by showing, with clear and convincing evidence, that the complained of transaction was fair in every respect. Brown v. Brown (1978), 62 Ill.App.3d 328, 334.

"Important factors in determining whether a particular transaction is fair include a showing by the fiduciary 1) that he/she has made a free and frank disclosure of all the relevant information which he/she had, 2) that the consideration was adequate, and 3) that the principal had competent, independent advice before completing the transaction." Dombrow v. Dombrow (1948), 401 Ill. 324, 332-333.

In the Finding of Facts, this Court found that a fiduciary relationship existed between Jeffries and Lewis, and that Lewis failed to demonstrate, by clear and convincing evidence, that the transaction was fair in all respects, according to the criteria set forth above.

Lewis engaged in self dealing and breached her fiduciary duty to Jeffries by acting on her own behalf, and on behalf of her investor-clients, the Barlows, at the expense of Jeffries.

Finally, Lewis breached her fiduciary duty in that her actions constituted fraud, constructive fraud or negligent representations, as will be more fully discussed below.

II. Violation of the Illinois Consumer Fraud Act

The Plaintiff has established at trial that Lewis violated the Consumer Fraud Act ("Act"). Section 2 of the Act provides that:

> "unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact,...in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been mislead, deceived or damaged thereby."

Ill.Rev.Stat. ch. 121 1/2, Sec. 262.

In Elder v. Coronet Ins. Co. (1990), 201 Ill.App.3d 733, the Court held that to establish a deceptive practice claim, a plaintiff "must show 1) a deceptive act or practice, 2) an intent by defendant that he rely on the deception, and 3) the deception occurred in the course of conduct involving a trade or commerce." (citing Crowder v. Bob Oberling Enterprises, Inc. (1986), 148 Ill.App.3d 313, 316.)

Lewis violated the Act by, in the course of a business transaction, making false representations and omissions of information to Jeffries about the nature of the transaction and by intending that Jeffries would rely on her misrepresentations and omissions concerning the nature of the transaction, since she was in a fiduciary relationship with him and knew of his reliance upon her.

Lewis' good or bad faith is immaterial. It is only important that Lewis intended for Jeffries to rely on her acts or omissions (See Warner v. LeMay (1986), 142 Ill.App.3d 550, 566).

In an affirmative misrepresentation or omission case, Plaintiff is required to establish a misrepresentation or omission of a material fact. GMAC v. Grisson (1986), 160 Ill.App.3d 62.

This Court finds that Lewis completely misrepresented the transaction to Jeffries and Burpo. Lewis misrepresented that the transaction was a loan or a "refinancing", rather than a sale of Jeffries' property.

This Court finds that Lewis never described to Jeffries that he was selling his home with an option to repurchase, requiring both six months of payments and a balloon payment of $36,000 to exercise that

option. Most significantly, Lewis represented the transaction to Jeffries and Burpo as a loan, rather than a sale.

Further, the failure of Lewis to explain to Jeffries the contents and meaning of the documents he signed, including the quit claim deed, was another material misrepresentation and omission.

III. Common Law Fraud

To establish a prima facie case of common law fraud, the following elements must be shown:

1) a false statement of material fact;

2) known or believed to be false by the person making it;

3) intent to induce the other party to act;

4) action by the other party in reliance on the truth of the statement; and

5) damage to the other party resulting from such reliance.

Soules v. General Motors Corp. (1980), 79 Ill.2d 282.

The evidence presented at trial established each of the above elements.

This Court finds that:

1) Lewis' representation of the transaction to Jeffries as a refinancing, and not as a sale, was a misrepresentation of material fact.
2) Lewis made those misrepresentations to Jeffries with knowledge of their falsity.
3) Lewis' misrepresentations and omissions were made with the intent to induce Jeffries to act.
4) Jeffries relied on the misrepresentations of Lewis in entering into the transaction he thought was a loan.
5) Jeffries relied on Lewis' misrepresentations to his detriment, as he lost his home which he had no intention to sell.

Under a theory of common law fraud, knowledge of misrepresentation and damage must be established. Lewis' misrepresentations to Jeffries were knowing representations and concealments. Lewis knew

Jeffries had no interest in selling his property. Further, Jeffries relied on those misrepresentations to his detriment.

The Liability of Albert and Barbara Barlow

I. The Barlows are Liable Under An Agency Theory

Lewis' misrepresentations and acts of self dealing were done within the scope of her authority to act as the agent of the Barlows.

The Barlows gave Lewis actual authority to act on their behalf. A principal is liable for the acts of an agent who is acting within the scope of his or her authority. Kessler, Merci and Lochner v. Pioneer Bank (1981), 101 Ill.App.3d 502.

This Court found that an agency relationship between the Barlows and Lewis predated the Jeffries transaction, and that an agency relationship was demonstrated by the conduct of the parties.

The Barlows objective was to purchase Mr. Jeffries property. They relied entirely on Lewis as their agent to put the transaction together. The Barlows relied on Lewis' expertise to draft all of the documents used in the transaction and to determine all the terms set out in the documents without any input from them. Further, the Barlows relied on Lewis to take care of getting the loan, including finding of a lender. Accordingly, the evidence showed the Barlows' complete reliance on Lewis to protect their interests and that Lewis was acting as the agent of the Barlows.

Lewis' misrepresentations and acts of self dealing were done within the scope of her authority as an agent of the Barlows. The Barlows understood that Mr. Jeffries was participating in this transaction organized by Lewis with the objective of getting the loan he needed to pay the taxes and keep his property. They explicitly or

implicitly authorized Lewis to misrepresent that their role in this transaction was to offer their credit to save his property by getting the loan that Mr. Jeffries could not get on his own. The Barlows knew, however, that they were actually using their credit for themselves, not Mr. Jeffries.

Additionally, the Barlows also were aware that Ms. Lewis, their agent, made misrepresentations to Security Pacific that at the time they applied for the loan, the Barlows were the property's current owners. The Barlows had authorized Ms. Lewis to get them the loan that was needed.

The Barlows knew that this transaction was bound to fail for Mr. Jeffries. They knew Jeffries would have to obtain within six months a loan on the property that was actually larger than what they were able to get from Security Pacific. The Barlows had given Lewis the authority to misrepresent the nature of the transaction to Mr. Jeffries. As Lewis was acting within the scope of her authority, the Barlows are liable for her acts.

The Barlows ratified Lewis' acts of misrepresentation and self dealing. When an agent has acted outside the scope of his or her authority, the principal may ratify the act and such subsequent assent and ratification is equivalent to original authority and confirms that which originally was unauthorized. Advance Mortgage Corp v. Concordia Mut. Life (1985), 135 Ill.App.3d 477, 484. Thus, even if Ms. Lewis did not act with actual authority from the Barlows, their subsequent ratification makes them liable for Lewis' acts.

Ratification takes place where 1) the principal has knowledge of unauthorized acts of the other party and 2) takes a position which is

inconsistent with non-affirmation of these acts. Mateyka v. Schroeder (1987), 152 Ill.App.3d 854, 866.

The Barlows ratified the misrepresentation that the services that they were offering Mr. Jeffries was the use of their credit. Further, the Barlows accepted Mr. Jeffries paying for the fire insurance after they became the owners of the property.

The Barlows acquiesced in participating in a transaction that they knew was bound to fail for Mr. Jeffries. They also acquiesced in allowing Lewis to set the terms of the option contract to provide them with an additional profit above the $4,200 already paid by Mr. Jeffries. All these actions show the Barlows subsequent ratification of Lewis' acts of misrepresentation and self dealing.

II. The Barlows Are Liable for Ms. Lewis' Breach of her Fiduciary Duty

The Barlows are also liable for Ms. Lewis' breach of her fiduciary duty. The Barlows had notice that Lewis was betraying her fiduciary responsibility to Mr. Jeffries.

Non-fiduciaries who engage in a transaction with a fiduciary with notice that the fiduciary is betraying her beneficiary are themselves guilty of participating in the breach of fiduciary duty and are jointly and severally liable for the loss caused by the fiduciary's breach of duty. Field v. Oberworthmann (1957) 14 Ill.App.2d 218. The Barlows knew of the fiduciary relationship between Ms. Lewis and Mr. Jeffries, and that Jeffries had gone to Lewis for help to try to save his home. They also knew that Ms. Lewis was breaching her fiduciary duties in that she had made misrepresentations to Mr. Jeffries concerning the transaction. The Barlows not only knew of the breach of fiduciary duty, but also benefitted from it, and thus, are jointly

and severally liable for all damages caused by Ms. Lewis violating her fiduciary responsibilities.

III. The Barlows Are Also Liable As Co-Consipirators.

The elements of civil conspiracy are: 1) an agreement between two or more persons; 2) to participate in an unlawful act, or a lawful act in an unlawful manner; 3) an injury caused by an overt act performed by one of the parties to the agreement; 4) the overt act was done pursuant to and in furtherance of the common scheme. Wolf v. Liberis (1987). 153 Ill.App.3d 488, 496.

The Barlows entered into an agreement with Lewis to be involved in her transactions as investors. The Barlows knew or should have known that the terms of the transaction were such that Mr. Jeffries would not be able to ever regain ownership after he quit claimed the property to them. The Barlows are liable with Lewis under the Consumer Fraud Act and for common law fraud.

Damages

This Court has found that Mr. Jeffries is entitled to actual damages. Mr. Jeffries is also entitled to punitive damages because there was a flagrant breach of fiduciary duty and elements of fraud.

Punitive damages are properly awarded where a wrongful act is accompanied by one or more aggravating circumstances such as fraud, willfulness, wantonness, malice or oppression. Beaton & Assoc. v. Joslyn Mfg. & Supply (1987), 159 Ill.App.3d 834. Punitive damages are appropriate to punish and deter conduct where defendant is guilty of fraud or an intentional breach of fiduciary duty. Obermaier v. Obermaier (1984), 128 Ill.App.3d 602, 610.

While deceit alone cannot support a punitive damages award, such damages may be allowed "where the wrong involves some violation of duty springing from a relation of trust or confidence, or where the fraud is gross, or the case presents other extraordinary or exceptional circumstances clearly showing malice and willfulness." Central Bank-Granite City v. Ziaee (1989), 188 Ill.App.3d 936, 947 (quoting Home Savings & Loan Assoc. v. Schneider (1985), 108 Ill.2d 277, 284).

In the instant case, there was substantial evidence of Lewis' breach of her fiduciary duty amounting to gross misconduct. Lewis took advantage of Jeffries' vulnerable position and his limited intelligence, while at the same time Jeffries had placed his trust in Lewis as his agent.

In Illinois, it is well settled that punitive damages need not bear a proportional relationship to actual damages. Allabastro v. Cummins (1980), 90 Ill.App.3d 394, 400. Punitive damages do depend upon "the motive, purpose and condition of mind and heart of the wrongdoer and the circumstances and manner of his doing the wrong." Id.

Ms. Lewis held herself out to Mr. Jeffries as a person with experience in obtaining financing. She took advantage of her superior position and knowledge that Jeffries and Burpo were both very unsophisticated. Lewis enticed Jeffries with the false hope that the transaction with the Barlows would save his home. Lewis involved Jeffries in a scheme which was certain to result in the loss of his home.

The Barlows also knew that their success in getting the property depended on Lewis persuading Mr. Jeffries that this transaction was in his best interest. They were active participants in the scheme to deprive Jeffries of his home and his equity. They received a windfall by retaining as their agent someone that they knew was an "insider", who was the same person Mr. Jeffries was relying on to save his home.

Therefore, Ms. Lewis and the Barlows will be assessed punitive damages in the amount of $50,000.00

ORDER

Based upon the Findings of Fact and Memorandum of Law hereinabove set out, the Court does herewith find for the plaintiff and against the defendants.

The Court does further order that the defendants be assessed the sum of $27,496.35, being assessed as actual damages suffered by the plaintiff, and judgment is entered thereon.

Further, the Court does herewith enter judgment for punitive damages in the sum of $50,000 against the defendants so as to further deter them and any other persons who attempt to perpetrate the scam perpetrated by the defendants in this cause.

Further, defendants are ordered to pay the costs of this suit incurred by the plaintiff.

There is no just cause to delay the appeal hereof.

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JUDGE